

OUR LADY'S YOUTH CENTER

IBLA 97-473

Decided April 13, 1999

Appeal from a decision of Las Cruces District Office, Bureau of Land Management, terminating Recreation and Public Purposes lease NMNM 24542 and denying a request for conveyance of the leased land.

Vacated; NMNM 24542 held to have expired.

1. Recreation and Public Purposes Act

Section 2 of the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869-1 (1994), authorizes two different lease terms for two different types of entities. Governmental entities may receive leases with terms of up to 25 years, while "nonprofit associations and nonprofit corporations" are limited to terms of up to 20 years. Where BLM has erroneously issued a lease under the Act to a nonprofit corporation for a period of 25 years, that lease may be considered to have been issued for 20 years and to have expired at the end of 20 years.

APPEARANCES: James L. Gallagher, Esq., El Paso, Texas, for appellant; Grant L. Vaughan, Esq., Office of the Field Solicitor, Southwest Region, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Our Lady's Youth Center (Center) has appealed from a decision, dated June 10, 1997, by the Las Cruces District Office, Bureau of Land Management (BLM), New Mexico, terminating Recreation and Public Purposes (R&PP) lease NMNM 24542, and denying the Center's request for conveyance of the leased land. ^{1/} By order dated August 25, 1997, the Board granted the Center's petition for stay of the decision.

BLM issued the lease in question to the Center on December 31, 1975, for 320 acres described as the S½, sec. 13, T. 25 S., R. 3 E., New Mexico

^{1/} The R&PP Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. 43 U.S.C. § 869-1 (1994).

Principal Meridian, for operation as a youth camp for disadvantaged children. The lands were sought for use in conjunction with a planned development on adjacent private lands, later known as the Lord's Ranch. The term of the lease was 25 years "with option to purchase upon completion of development in accordance with the Development Plan and Construction Schedule [Plan] dated April 15, 1975." The Plan set forth a timetable for construction of an overnight campsite, rock fireplace, nature trail, horse race track, horse jump, fox hunt course, capture the flag area with 2 forts, picnic area, wagon trail, barrel racing course, two fish ponds, and separate observation areas for rabbits, birds, and desert vegetation. According to the Plan, construction was to be completed by January 31, 1977.

In a memorandum dated September 26, 1977, from R.F. Anderson, BLM Realty Specialist, to the Las Cruces District Manager, Anderson reported the results of a September 22, 1977, field examination of the leased lands conducted at the request of the Center "to consider their desire for a R&PP patent to the land." In the memorandum, he stated:

The field examiners found three recreation (fish) ponds substantially developed, stocked with fish, and replenished weekly with water from a nearby well located on the Center's privately owned land. The three ponds are estimated to have a surface area of about 2 acres.

The 320 acres ha[ve] been fenced and a trail road built adjacent to the fence. Six locations adjacent to this perimeter road were found where development is in progress. The developments consist of planting trees (est. 5-10 in each location) at small openings in the creosote/mesquite brush vegetation. One site has a rock masonry fire place.

Brush has been cleared from an area estimated to be between 5 and 10 acres for a playing field or horse riding area. The level of use does not appear to be very heavy.

Development of the northern eighty acres of the Center's privately owned land has an unplanned appearance and is in all stages of progress, however, a substantial investment of time and money is obvious. The south eighty acres of the Center's privately owned land is essentially undeveloped except for a few acres in the southeast corner where a large barn and a well for the fish pond have been developed. The remainder is in mesquite and creosote brush and appears unused.

Under the heading "Recommendation," Anderson stated:

It is the policy of the Bureau that less intensive recreation uses and development of land ordinarily are not a basis for a R&PP patent. The majority of the subject land is not

proposed for substantial financial investment in facilities. A large acreage (160) acres is owned by the lessee adjacent to the subject land. Eighty acres of this land is essentially undeveloped. It is [,] therefore, recommended that the present use authorization (lease) is proper and should not be altered. The consideration of a patent would not be consistent with Bureau policy or satisfy any apparent real need of the applicant.

By letter dated November 10, 1977, BLM informed the Center that, in light of the field examination and recommendation, it would not consider patenting the land.

In a letter received by BLM on January 30, 1981, the Center requested a renewal and extension of its lease for a period of 25 years, stating that it agreed with BLM's suggestion that it should apply for an extension of the lease "rather than purchase the land covered by the lease, thinking that your idea was an excellent one * * *." It represented therein that it had completed all improvements, development, and construction called for in the Plan.

In a memorandum dated March 27, 1981, the Las Cruces District Manager provided the following recommendation to the State Director concerning the Center's request for an extension of the lease:

The subject R&PP lease has been developed and used satisfactorily and a continuation may be granted as requested. We have no problem with the period of years requested. Use and development and future plans are for extensive recreation use as compared to intensive use. The small acreage where the ponds are located is the only area intensively developed. We, therefore, recommend the lease not be worded lease or purchase - just "lease."

The case record contains a note to the file dated August 4, 1986, stating that the Center never followed up on its request for an extension of the lease by filing a formal R&PP application. The note continues: "The request for extension of lease has never been acted on and will not be. The extension of the lease would preclude possible future uses, if current use was to cease or become inappropriate. The option still remains to renew at end of lease term."

A note to the file dated February 8, 1994, and signed by S. Miller, states that on that date Mike Halloran, a representative of the Center, came to the BLM office to discuss a visit by a BLM ranger. In that note, Miller recounted that she informed Halloran that "we were doing a routine compliance check & some concerns about unauthorized uses were noted," including the construction of buildings and a cemetery. Miller explained that she "[t]old him he needed to give us a rejustification with adjusted development plan. He said he would." She then stated: "Area is not being used for purposes intended in original plan." There is no evidence in the record of a response by Halloran to Miller's request.

In a January 15, 1997, memorandum to the Area Manager, Mimbres Resource Area, from Shirley Miller, Realty Specialist, Mimbres Resource Area, Miller reported the results of a compliance check on the Center's R&PP lease completed that day. She stated:

The 320 acres have not been developed as planned and what little development that did take place in the 1970's has now deteriorated. Only one of the three fish ponds remains - no fish and about two feet of water. Most of the trees they planted died and were dumped on the leased area. I didn't see any of the so called "rabbit trails" and the area they cleared for a ball field has revegetated with creosote and mesquite. Stockpiles of junk, tires, pipe, rock, and wood clutter the lease area.

Unauthorized uses were noted. They have constructed two small one room buildings and installed two outdoor toilets on the 320 acres. They have also started an unauthorized cemetery which now consists of 9 small graves. During the field exam we found out that 8 of the graves are supposedly for aborted fetus' [sic] and the other one is a two year old boy they wrapped in a sheet and buried.

Miller recommended that BLM terminate the lease on the basis of noncompliance and lack of development and that the Center be required to reclaim the land. She stated that "[t]he adjacent 160 acres of private land they own [are] adequate for their purposes."

On February 13, 1997, BLM issued an "Order to Show Cause," reciting the history of activity on the lease and directing that the Center either show cause why the lease should not be terminated by providing evidence that "no violation has occurred," decline to submit evidence and request a hearing before an administrative law judge, or, if in agreement that the lease should be terminated, submit a letter requesting termination of the lease.

On April 10, 1997, at the request of an aide to United States Senator Pete V. Dominici, the Las Cruces District Manager, and the Mimbres Area Manager met with various people, including representatives of the Center, at Lord's Ranch. They all took a tour of the leased lands and in a memorandum to the file, dated April 11, 1997, the Mimbres Area Manager stated:

1. All the markers, crosses, and tiles have been removed from the cemetery.
2. The broken down picnic table was removed.
3. Trash in one of the dried ponds, including tires, old railroad ties, and other debris, was removed.
4. The two prayer houses were in a neater, cleaner condition inside.

5. Two new picnic tables made from railroad ties were on site.

6. A series of horse jumps made from railroad ties were on site. I saw three.

She further stated that upon returning to the District Office, she and the District Manager discussed the cemetery and, although they had been told by a representative of the Center that "the graves had been removed," the District Manager did not believe any human remains had been removed "because the surface area was not disturbed."

At the request of the District Manager, Miller and another BLM employee visited the leased lands on April 14, 1997, and learned from Halloran that only the headstones had been removed from the cemetery. (Miller Memorandum to the File, dated April 17, 1997.) Miller stated that they drove along the boundary road and observed four picnic tables constructed of "the old railroad ties that had been stockpiled in one of the empty ponds." Id. She also "counted seven wooden horse jumps which had been constructed within the 2-3 weeks." Id.

On April 18, 1997, the Center filed a response to the order, and, in an accompanying letter, requested that the leased lands be patented to it. In the response, the Center stated that "[c]ontinually since 1975, the Property has been an integral part of the Lord's Ranch * * * used as a youth camp * * * for recreational purposes." The Center asserted that "significant improvements" including "multiple lakes, the maintenance, improvement, and extension of approximately 2 ½ miles of roads * * * 1 ½ miles of expensive fencing, the construction of two all-weather overnight campsites, * * * removable outdoor toilet facilities, nature trails and riding paths" had been completed on the lease. The Center estimated the value of those improvements, exclusive of maintenance and upkeep, to be over \$200,000. (Response at 3.) Further, the Center noted that a well had been dug at a cost of \$100,000 and that an additional \$100,000 had been spent to rework the well. In addition, the Center noted that two ponds were built and stocked with fish. The Center requested that BLM "provide a definite statement of those items of the [lease] development plan, which, in the opinion of BLM, have not been complied with." (Response at 6.) The Center offered to respond with a "definite time table for compliance for any obligations which it may not have met." Id.

The Center pointed out that the 1975 Plan envisioned that the property would remain essentially in a natural state. The Center alleged, however, that the property contains

two (2) overnight campsites, a rock fireplace, nature hikes, a one-half mile horse racetrack, horse jumps, a "fox hunt course," an area for capture the flag with forts and games, picnic areas,

wagon trail and other improved roads, a barrel racing course, two (2) fish ponds and areas for observation of animals, birds, and native desert vegetation.

(Response at 7.)

Further, the Center defended the presence of the single room dwellings and outdoor toilets as necessary adjuncts to a campsite in the harsh desert environment. The Center admitted that a small area of the lease was used as a burial site, but noted that it had requested guidance from BLM as to what should be done about the graves.

On June 10, 1997, BLM issued the decision under review in which it terminated R&PP lease NMNM 24542 and stated that no new construction could take place on the lands. It also denied the Center's request for conveyance of the land. BLM's decision terminating the lease states that compliance checks in 1984, 1994 and 1997 showed that the land had not been developed as specified in the lease and disclosed the following unauthorized uses: (1) a cemetery; (2) two non-contained outdoor toilets; (3) two single room living quarters; (4) one pond; and (5) one large borrow pit. BLM noted that trail signs and picnic areas had deteriorated and that there was trash throughout the lease area. BLM stated further that its April 17, 1997, field exam revealed that the "Center had hurriedly constructed some picnic tables and horse jumps out of old railroad ties * * * and [that] the headstones on the graves had been removed." BLM found the Center's response to the show cause order inadequate and denied its request for purchase "[b]ecause the substantial requirement of the purchase option has not been met and unauthorized uses have occurred."

On appeal, the Center challenges BLM's view of the facts, alleging that the lease should not be terminated, that it has complied with the Plan, and that it should receive a patent to the 320 acres. It also requests a hearing before an administrative law judge. In its answer, BLM argues that the June 10, 1997, decision should be upheld. However, it also points out a fact regarding the Center's status that we believe controls the disposition of this case.

[1] Under section 2 of the R&PP Act, as amended, 43 U.S.C. § 869-1 (1994), the Secretary of the Interior may, after due consideration of the power value of the land, whether or not withdrawn therefor, under certain circumstances, "(a) sell such land to the State, Territory, county, or other State, Territorial, or Federal instrumentality or political subdivision in which the lands are located, or to a nearby municipal corporation in the same State or Territory * * * (b) lease such land" to the same entities, for a period of

up to twenty-five years, (c) sell such land to a nonprofit corporation or nonprofit association * * *, or (d) lease such land to a nonprofit corporation or nonprofit association at a reasonable annual rental, for a period of up to twenty years, and, at the discretion of the Secretary, with a privilege of renewal for a like period.

See 43 C.F.R. § 2912.1-1(a) (emphasis added).

Thus, the R&PP Act authorizes two different lease terms for two different types of entities. Governmental entities may receive leases with terms of up to 25 years, while "nonprofit associations and nonprofit corporations" are limited to terms of up to 20 years. As a nonprofit corporation, the Center falls into the second category. Accordingly, when BLM issued the lease in question in 1975, it did not have the authority to grant a lease to the Center with a term greater than 20 years. Although NMNM 24542 expressly states that it is for a term of 25 years, BLM erred in including that term of years in the lease.

We conclude that the statutory language must control and that the maximum term that BLM could have authorized for the Center under the statute was 20 years. In accordance with that language, we find that R&PP lease NMNM 24542 expired at the end of 20 years on December 31, 1995. BLM had no authority to collect rental for any period of time beyond that date.

See 43 C.F.R. § 1810.3(a) and (b). To the extent the Center paid rentals for periods after December 31, 1995, that rental must be refunded to the Center.

BLM's decision must be vacated. There is no lease in existence to terminate. ^{2/} In addition, we find that the option to purchase included in the lease expired on December 31, 1995. The Center's request for a hearing is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is vacated and NMNM 24542 is held to have expired on December 31, 1995.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

T. Britt Price
Administrative Judge

^{2/} It is clear that much of the information submitted by the Center in support of its claimed use and development of the lands in question fails to distinguish between use of the public lands and use of the Center's private land. While there is no doubt that the Center has developed and makes extensive use of its private lands, the record establishes little use and development of the lands covered by the lease. Expiration of the lease does not preclude the Center from continuing to make casual use of the lands in question. See 43 C.F.R. § 2920.0-5(k); 43 C.F.R. § 2920.1-1(d).